

# MFSA

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## MALTA FINANCIAL SERVICES AUTHORITY

### **Application of Investment Services Rules to Certain Investment Services Licence Holders**

2<sup>nd</sup> May, 2007

On the 31<sup>st</sup> January 2007, MFSA published its draft Sections 1 to 8 of the Investment Services Rules (“the Rules”) for Investment Services Licence Holders. The Rules which are scheduled to come into force as from 1<sup>st</sup> November 2007, subject to the required supporting legislative framework being in place, transpose a number of requirements of Directive 2004/39/EC, the Markets in Financial Instruments Directive (henceforth ‘MiFiD’) and its implementing measure – Directive 2006/73/EC.

Following the receipt of a number of queries from the industry, the MFSA considers it appropriate to clarify the extent of applicability of the Conduct of Business section of the Rules (Section 2) to certain Investment Services Licence Holders, namely Custodians of Collective Investment Schemes and Fund Management Companies. For the avoidance of doubt, the Supplementary Conditions for Custodians and Managers of Collective Investment Schemes, currently included in the MFSA’s Investment Services Guidelines, will continue to apply and will eventually form part of the new Rules.

The MFSA expects Custodians of Collective Investment Schemes and Fund Management Companies which are not licensed to provide any of the services listed in Section A of Annex 1 of the MiFiD (henceforth ‘MiFiD services’) – copy attached for ease of reference – but are only licensed to provide Custody or Management services for collective investment schemes with or without the provision of nominee services for investors, to comply with the requirements included under the following sub-titles of Section 2 of the Rules ‘Conduct of Business’:

- *General*
- *Client Reporting: Statement of Client Financial Instruments or Client Money (where applicable)*
- *Record-keeping*
- *Safeguarding of Client Assets (where applicable)*
- *Conflicts of Interest*
- *Staff Dealing*
- *Provision of Services through the Medium of another Licence Holder*
- *Conduct of Business Rules for Licence Holders Producing and Disseminating Investment Research (where applicable)*
- *Conditions applicable to the Provision of Information*

- *Complaints Handling*

In addition, where a Fund Management Company's own staff may be involved in promoting funds managed by the company and receiving orders directly (and not through another licensed intermediary) from investors for subscribing to units in the funds concerned, the MFSA expects such company to also comply with the requirements included under the following sub-titles of Section 2 of the Rules 'Conduct of Business' in respect of such clients serviced 'directly':

- *Client Classification*
- *Client Profile Requirements: relating to the Assessment of Appropriateness*
- *Client Disclosure Requirements*
- *Client Reporting:*
  - *General*
  - *Reporting Obligations n Respect of Execution of Orders other than for Portfolio Management*
- *Client Order Handling Rules*
- *Provisions applicable to Licence Holders whose staff promote and sell.*

Moreover, Rule 2.82 will also apply where the clients approaching the Fund Management Company for subscription in the Collective Investment Schemes it manages are "eligible counterparties" as defined in the Glossary to the Rules.

Naturally, where Fund Management Companies provide the service of portfolio management for individual clients and/ or investment advice – both of which fall within Section A of Annex 1 of the MiFID, then all the Conduct of Business Rules are applicable to such companies.

In the light of the above, Custodians of Collective Investment Schemes and Fund Management Companies are requested to assess the above in the light of their current business operations and to inform MFSA by not later than **Wednesday 23<sup>rd</sup> May 2007** should they require further clarity or envisage any difficulties in following the above-mentioned requirements.

### **Contacts**

Should you have any queries regarding MiFID, please do not hesitate to contact:

Mr. Christopher P. Buttigieg  
25485229  
[cbuttigieg@mfsa.com.mt](mailto:cbuttigieg@mfsa.com.mt)

Dr. Sarah Pulis  
25485232  
[spulis@mfsa.com.mt](mailto:spulis@mfsa.com.mt)

**Annex 1 to the MiFiD**

**LIST OF SERVICES AND ACTIVITIES AND FINANCIAL INSTRUMENTS**

Section A

**Investment services and activities**

- (1) Reception and transmission of orders in relation to one or more financial instruments.
- (2) Execution of orders on behalf of clients.
- (3) Dealing on own account.
- (4) Portfolio management.
- (5) Investment advice.
- (6) Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis.
- (7) Placing of financial instruments without a firm commitment basis
- (8) Operation of Multilateral Trading Facilities.

Section B

**Ancillary services**

- (1) Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management;
- (2) Granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction;
- (3) Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings;
- (4) Foreign exchange services where these are connected to the provision of investment services;
- (5) Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments;
- (6) Services related to underwriting.
- (7) Investment services and activities as well as ancillary services of the type included under Section A or B of Annex 1 related to the underlying of the derivatives included under Section C – 5, 6, 7 and 10 - where these are connected to the provision of investment or ancillary services.

Section C

**Financial Instruments**

- (1) Transferable securities;
- (2) Money-market instruments;
- (3) Units in collective investment undertakings;
- (4) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;

- (5) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event); L 145/42 EN Official Journal of the European Union 30.4.2004
- (6) Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market and/or an MTF;
- (7) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in C.6 and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;
- (8) Derivative instruments for the transfer of credit risk;
- (9) Financial contracts for differences.
- (10) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls.